

## **Intergovernmental Agreement**

BY THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”), entered into by the county or municipality listed on the signature line below (“Unit”) and the Consolidated City of Indianapolis Department of Waterworks (“Waterworks”), agree as follows:

Whereas, the water utilities of IWC Resources, Inc. (“Water Company”) provide public water utility and related water production, transmission, delivery, storage, distribution, and supply services (“Water Services”) throughout central Indiana, including services rendered within Unit’s territory; and

Whereas, on the effective date (the “Effective Date”), Waterworks will acquire substantially all of the assets and properties of the Water Company including the right and obligation to provide Water Services to residential, commercial, industrial, municipal and other customers (“Customers”) located throughout central Indiana, which includes Customers located within Unit’s territory; and

Whereas, the parties make this Agreement for the purpose of providing the terms and conditions of their mutual commitment to cooperation in the provision of Water Services within Unit’s territory; and

Whereas, Waterworks intends to enter into agreements regarding Water Services with other counties and municipalities located throughout central Indiana (“Other Units” and, together with Unit, “Units”) on terms substantially similar to this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1. Administration of this Agreement. The parties acknowledge and agree that mutual cooperation is important for the effective and efficient administration of this Agreement.
  - a. Joint Advisory Board. To promote cooperation in the administration of this Agreement, there will be established a joint advisory board (the “Advisory Board”) whose members will include a representative from Waterworks and from each of the Units electing to appoint a member to the Advisory Board.
  - b. Unit Appointment. If Unit so elects, then it will appoint one member to the Advisory Board. Unit’s Advisory Board member serves at the pleasure of

Unit for a term of one year ending on December thirty-first, and until his or her successor is appointed and qualified. Unit's member may be reappointed for successive terms. The chair shall be selected annually by a majority of the members of the Advisory Board.

- c. Advisory Board Powers. The Advisory Board has the power to furnish recommendations to the Board of Directors of Waterworks with respect to any of the powers and duties the Waterworks' Board may exercise and perform including, but not limited to, recommendations concerning service, utility service agreements, rates, water quality, system expansion, bonding, and management. Waterworks may not withdraw from the jurisdiction of the Indiana Utility Regulatory Commission over its rates and provision of services unless approval to do so is given by a two-thirds majority of the Advisory Board. It is not anticipated that Waterworks will ever levy a tax and, in any event, no such tax shall be levied without approval by a two-thirds majority of the Advisory Board. The Advisory Board also may recommend that Waterworks dispose of certain system assets within a Unit's territory to a Unit. If Waterworks should fail to provide adequate water supply or distribution system expansion within a Unit's territory comparable to the historical growth experience for that Unit over the immediately preceding ten years, or otherwise upon Waterworks' desire to dispose of system assets within a Unit's territory, then Waterworks shall negotiate in good faith with the Unit for the purchase of the assets and take into account, among other things, the fair market value of the applicable assets as part of an integrated water-utility system, the cost of separating the assets from the existing system, including but not limited to any replacement costs, and the overall impact the disposal may have on the financial condition of Waterworks. If agreement cannot be reached on the price for such system assets, then the issue of price shall be resolved through binding arbitration before a three-judge panel. Each side shall select one judge with the third judge selected by the other two judges. The Advisory Board also has the power to retain an accountant, engineering consultant, and attorney for a reasonable annual fixed fee not to exceed \$150,000 in total per year unless otherwise increased by the Board of Directors of Waterworks.
- d. Meetings. The Advisory Board may hold meetings at times and places prescribed by its rules or established by resolution. No notice to members is required for holding, or taking any action at, a regularly scheduled meeting. A special meeting of the Advisory Board may be called by the chairperson or by a majority of its members at any place in the Waterworks' jurisdiction as designated in the call. Each member shall be notified of the time and place of a special meeting by written notice delivered at least forty-eight (48) hours in advance of the meeting. The notice requirement may be waived as to a member who attends the meeting, or who executes a written waiver of notice either before or after the meeting. Unless considered unnecessary by the Advisory Board, a representative of Waterworks' operator will attend each meeting. The

Advisory Board may attend all meetings of the Board of Directors of Waterworks.

- e. Quorum and Voting. A majority of the total number of members shall constitute a quorum of the Advisory Board. A quorum is required for official Advisory Board action and the Advisory Board shall act by resolution and a majority vote of the quorum is required to pass a resolution. However, for votes under paragraphs 1.c., 2.b., and 2.h., provided for herein, all members of the Advisory Board must be present.

2. Waterworks Responsibilities.

- a. Water Services. On the Effective Date, the Water Company will assign and Waterworks will assume, as authorized by and subject to city-county general ordinance 112, 2001, all of the Water Company's rights, powers, privileges, and obligations under one or more franchise permits and/or similar agreements that are attached hereto and incorporated into this Agreement by this reference (collectively, the "Franchise Permits"). Accordingly, Unit hereby consents, approves and permits such assignment by the Water Company and assumption by Waterworks as of the Effective Date. Waterworks' responsibilities under this Agreement and under the Franchise Permits will include the provision of Water Services to Customers within Unit's territory.
- b. Indiana Utility Regulatory Commission Jurisdiction. Waterworks shall be subject to the jurisdiction of the Indiana Utility Regulatory Commission ("the Commission") to the fullest extent and will not utilize any current or future statutory framework to withdraw from or otherwise eliminate the Commission's jurisdiction without a two-thirds majority vote of the Advisory Board. In addition, Waterworks agrees to comply with the regulations set forth in 170 I.A.C. 6-1 and 170 I.A.C. 6-1.5 unless authorized to do otherwise by a two-thirds majority vote of the Advisory Board.
- c. Financing, Staffing, Budgeting. The financing, staffing, and supplying of Water Services and the establishing and maintaining of a budget for Waterworks shall be determined by the Board of Directors of Waterworks.
- d. Supervision of Funds. The City Controller, as the chief fiscal officer to Waterworks, shall be responsible for receiving, disbursing, and accounting for all monies of Waterworks. All monies received from the operation of Waterworks, or received from the disposal of any assets or operation rights thereof, shall be used only for the operation, maintenance, extension, financing, acquisition of professional or expert personnel, payment in lieu of taxes, or as otherwise specifically directed by the Board of Directors of Waterworks for the provision of Water Services.

- e. Payments in Lieu of Taxes. Waterworks shall make payments to compensate all units within the territory of Unit for taxes that would have been due on its utility property were it privately owned, as long as payments in lieu of taxes may be legally paid by a public utility in the State of Indiana.
- f. Rates and Provision of Service. For a period of five (5) years following the Effective Date, Waterworks will not file a rate petition with the Commission seeking a rate increase or otherwise implement a rate increase for customers served by Waterworks within the Unit. However, Waterworks may, within that five-year period, seek emergency rate relief – for example, rate increases resulting from the need to ameliorate public-health concerns – if warranted. Those Units which are currently subject to the same Water Company retail water rate tariffs as are customers within Indianapolis shall never be charged retail rates by Waterworks higher than those charged by Waterworks to retail customers within Indianapolis. Waterworks shall treat all Units with substantial similarity in a nondiscriminatory fashion, particularly in offering preferential rates and/or extension of services for economic development purposes.
- g. Notice to Unit's Advisory Board Member. Waterworks will provide adequate and reasonable notice to Unit's Advisory Board Member of any water main extension proposed by the Waterworks within Unit's territory. The Unit's Advisory Board Member may, within 15 days, direct the Secretary-Treasurer of Waterworks' Board of Directors to enter the proposed water main extension as an item on the agenda of the next regularly scheduled meeting of the Board. At the Board meeting the proposed water main extension will be subject to public discussion and Board consideration.
- h. Regional Water Authority Study. Waterworks agrees to commission a feasibility study to consider the establishment of a regional water authority for the purpose of acquiring, improving, operating, maintaining, financing, and generally providing of public water utility and related water production, delivery, storage, distribution, and supply services throughout central Indiana. The study will be completed within three years from the Effective Date, and presented to the Advisory Board for its recommendation. If the Advisory Board determines by two-thirds vote that a regional water authority is in the best interest of the public, Waterworks will hold a public hearing and consider whether it should encourage the Indiana General Assembly to create the appropriate statutory framework for the establishment and operation of a regional water authority. Waterworks will refrain from encouraging the Indiana General Assembly to create a statutory framework for a regional water authority in the absence of a best interest determination by the Advisory Board and will not otherwise implement or participate in such a regional water utility.

- i. Reservoirs Operation. Waterworks shall continue to operate Morse and Geist Reservoirs (collectively “the Reservoirs”), and attendant releases from these water sources, consistent with past water-utility practices of Water Company based on plans and specifications maintained by Water Company on or before the Effective Date. Drawdown of the Reservoirs will be predicated on a water-supply operation plan that responds to period of low precipitation and/or reduced stream flow and increased daily water demands by Waterworks’ customers. Waterworks will continue to utilize a coordinated reservoir operations approach that considers on-going water-supply conditions within the watersheds of the Reservoirs, as well as the watershed of Eagle Creek Reservoir. The operator of Waterworks will provide summary annual reports on reservoir releases and operations to the Advisory Board and the Waterworks Board of Directors.
  - j. Waterworks Property. In the event of termination of this Agreement, Waterworks retains all right, title and interest in the assets and real and personal property of the Water Company that Waterworks acquires as of the Effective Date and in any and all additions thereto. Further, Waterworks retains the right to acquire, hold, and dispose of real and personal property used and useful in the provision of Water Services in connection with this Agreement subject to the Units’ rights to acquire property in 1.c. above.
3. Miscellaneous.
- a. Duration. This Agreement is effective as of the Effective Date and shall be in force and effect until the later of: (a) the Waterworks’ Bonds are no longer outstanding; (b) Waterworks assets within the Unit’s territorial limits are no longer subject to any lien established by the Waterworks’ Bonds; or (c) the expiration without renewal or extension of all of the Franchise Permits.
  - b. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together and, together with substantially similar agreements of Waterworks and the Other Units, will constitute one and the same instrument.
  - c. No Effect on Unit’s Ability. This Agreement is not intended to, and does not, impinge upon the ability of the Unit to exercise any statutory right it may have to establish a department of waterworks and own a water utility.
  - d. Restriction of Waterworks’ Annexation Rights. The provision or the extension of water utility service by Waterworks shall not be utilized to annex property within the territory of the Unit.
  - e. Severability. Should any provision (section, paragraph, sentence, clause, or any other portion) of this Agreement be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid

provision or provisions, be given the effect intended by the parties in entering into this Agreement. To this end, the provisions of this Agreement are severable.

- f. Further Assurances. The parties will cooperate with each other and will execute and deliver, or cause to be delivered, all such other documents and instruments, and will take all such other actions, as the other party hereto may reasonably request from time to time to carry out the intent of the provisions and purposes of this Agreement.
  
- g. Approvals:
  - i. Approval of the Commission. On or before the Effective Date, Waterworks will submit this Agreement to the Commission for approval in connection with the Commission’s approval of the Settlement, IURC Cause Number 41821.
  
  - ii. Party Approvals. This Agreement shall be in full force and effect as of the Effective Date when approved by the Chairman of the Board of Directors of the Consolidated City of Indianapolis Department of Waterworks and the executive of Boone County, Indiana.

Consolidated City of Indianapolis Department of Waterworks

By: \_\_\_\_\_  
Chairman, Board of Directors

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Boone County, Indiana

By: \_\_\_\_\_  
Executive

Date: \_\_\_\_\_

Attest: \_\_\_\_\_